ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Reconsideration of Inmate-Only Payphone Declaratory Ruling	File No. AAD 96-39 RM-8181

REPLY IN SUPPORT OF PETITION FOR PARTIAL RECONSIDERATION OR STAY

The two oppositions of the Inmate Providers to petitioners' application for stay or partial reconsideration[1] miss the point — both procedurally and, more important, factually. Petitioners, the Bell Atlantic telephone companies, BellSouth Telecommunications, the NYNEX telephone companies and Pacific Bell and Nevada Bell, have demonstrated that the public interest would be served by staying the effectiveness of the Commission's *Declaratory Ruling* concerning inmate-only payphones[2] until the effective date of its regulations under new section 276 of the Communications Act.

Petitioners demonstrated that it makes no sense to require them to go through the process of identifying and reclassifying as CPE *certain equipment* in their payphone accounts by September when they will simply be able to reclassify the *entire account* shortly thereafter The Inmate Providers say that this is not a problem because if

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[1] Opposition to Petition for Stay (April 4, 1996) ("First Opp."); Opposition to Petitions for Reconsideration, Waiver and Stay (May 17, 1996) ("Second Opp.").

[2] *Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, Declaratory Ruling, RM-8181 (rel. February 20, 1996) ("*Declaratory Ruling*").

petitioners must conduct a manual review of their records to comply with the *Declaratory Ruling* then this is "something that they are going to have to do anyway to comply with section 276."[3] As petitioners explained, because all payphones are now regulated, there has never been any reason for exchange carriers to distinguish between inmate-only payphones and all other payphones in their records or books. This is the reason that a manual review of records and, in some cases, a physical inspection of the payphone customer's facility, might be required. No manual review or physical inspection would be necessary simply to move an entire account.[4]

The Inmate Providers are also wrong when they claim that it "should be a relatively easy task" for petitioners to make all the bookkeeping changes that the *Declaratory Ruling* requires,[5] a mistake that is perhaps not surprising in light of the fact that they are not subject to these same requirements. To comply with the *Declaratory Ruling*, petitioners would have to modify their accounting and time reporting records by adding more than twenty new financial codes (such as new Special Purpose Function Codes, Field Reporting Codes, Job Function Codes, and Universal Service Order Codes), and they would have to train thousands of employees on the correct use of new codes.

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[3] First Opp. at 4; Second Opp. at 6-7.

[4] In both their oppositions, the Inmate Providers stress that the *Declaratory Ruling* applies both to inmate payphones and what they call "inmate calling systems." First Opp. at 3; Second Opp. at 3-4. Whatever the distinction here, it does not detract from petitioners' point that they should not have to go through the costly process of culling out certain payphones for special treatment when they could simply wait and treat all payphones alike.

[5] Second Opp. at 3; First Opp. at 3 (claiming that petitioners "should have little difficulty").

The accounting systems would have to be modified, and those modifications tested. This work would need to be re-done, and the employees re-trained, when the new rules under section 276 become effective a few months later.[6]

The Inmate Providers are also incorrect when they suggest that the *Declaratory Ruling* does not require exchange carriers to unbundle and tariff the line and the central-office-based functions that their inmate-only payphones use.[7] While the more advanced enhancements of inmate-only service can be provided through separate processing equipment, inmate-only payphones are often "dumb" sets which are largely controlled by the "smarts" in the central office. If the Inmate Providers are correct that the *Declaratory Ruling* is based on a different premise[8] — that all exchange carrier inmate-only payphones are smart sets — then that ruling is fatally flawed and must be reconsidered on the merits. Unlike the Inmate Providers, the petitioners do not believe that the Commission's ruling was based on a plainly erroneous premise.

The Inmate Providers are also mistaken when they argue that the requested stay "would be inconsistent with Congress' mandate."[9] In fact, the mandate of Congress is clear that the Commission should completely reform its regulation of the payphone business, including prescribing a new per-call compensation mechanism, and that all of

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[6] The effect on the Commission's own resources during this critical time in the agency's history should also be considered. No one is served by requiring redundant, essentially meaningless activities.

[7] First Opp. at 4-5.

[8] *Id.*

[9] Second Opp. at 5.

the new rules should take effect at the same time. It would be inconsistent with this intent for the Commission to do the job on a piecemeal basis.

The Inmate Providers also miss the point in their procedural argument. Petitioners are not asking for a stay pending appeal or a stay pending some other form of reconsideration of the merits of the *Declaratory Ruling*. They are simply asking for a stay of the effectiveness of that order until the effective date of the rules under section 276. Therefore, the discussion of *Washington Metropolitan Transit Comm'n* and "irreparable harm"[10] are irrelevant to this application.

Finally, the Inmate Providers' oppositions ignore the Commission's own recognition that the *Declaratory Ruling* "leave[s] a number of issues unresolved"[11] that plainly will not be resolved in time for implementation of the *Declaratory Ruling* in September. Only when these issues have been dealt with, presumably in the Commission's section 276 rulemaking, will petitioners be in a position to comply with the *Declaratory Ruling*.

The only other submission not supporting petitioners' request was from MCI. Although the pleading says that it is "in opposition" to the relief sought by petitioners,[12] MCI does not attempt to refute the showing made in the Petition or in any way disagree with petitioners' arguments. MCI does ask, however, that if the Commission orders the stay. then petitioners should be required "to keep track of their

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10 First Opp. at 2, 4.

11 *Declaratory Ruling* ¶ 27.

12 MCI Comments at 1 (May 17, 1996).

inmate payphone investment and related expenses" for the period of the stay and to refund such amounts to interstate ratepayers.[13] Whatever the merits of such a procedure in a rate base/rate of return environment, it makes no sense at all in the price cap environment in which petitioners operate.

For the reasons stated, the Commission should stay the effectiveness of its *Declaratory Ruling* and not require petitioners to comply with it until the rules to be adopted under section 276 are effective.

Respectfully submitted,

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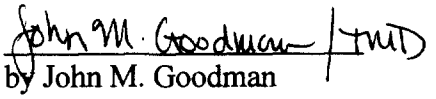

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[13] *Id.* at 3.

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Dated: May 28, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 1996 a copy of the foregoing "Reply in Support of Petition for Partial Reconsideration or Stay" was sent by first class mail, postage prepaid, to the parties on the attached list.

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